Ry. Co. v. *United States,* 15 Cr. Cl. 428; *Shaw* v. *Carpenter,* 54 Vt. 155, 41 Am. Rep. 837. And where there is a promise to do two things, one legal and the other illegal, if a severance is possible, the promise to do the legal act will be enforced, and the promise to do the illegal act will be disregarded. *United States* v. *Bradley,* 10 Pet. 343, 360. Plaintiff's promise of indemnity is severable from the rest of the promise, and enforceable, not being in contravention of the statute, nor is it against public policy. Public policy is variable, and no fixed rule can be given to determine what is public policy. *Hartford Ins. Co.* v. *Chicago, Etc., Railway,* 175 U. S. 91, 106; *Pope M"fg. Company* v. *Gormully,* 144 U. S. 224, 233. At the same time it must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appears that they contravene public right or public welfare. *Baltimore & Ohio Railway* v. *Voigt,* 176 U. S. 498, 505; *Printing & Registering Company* v. *Sampson,* L. R. 19 Eq. 465. A stipulation in a contract that a railroad company shall not be liable for fire negligently communicated by it to a building to be erected on its right of way, does not contravene public policy, as to render said stipulation void. *Griswold et al.* v. *Illinois Central Ry. Co.,* 90 Iowa 265, 57 N. W. 843, 24 L. R. A. 647; *Stephens* v. *Southern Pac. Ry. Co.,* 109 Cal. 86, 41 Pac. Rep. 783, 29 L. R. A. 751, 50 Am. St. Rep. 17.

CORPORATIONS—SALE OF CORPORATE PROPERTY TO DIRECTORS—VALIDITY.—The assets of a mining corporation consisted of certain mining claims and 399,000 shares of treasury stock with no market value. Four directors composing the board met and ordered the issuance to one director of 58,220 shares of the treasury stock of the company in satisfaction of a claim, and 11,460 shares to another director in satisfaction of his claim. The board also gave to a third party an option for one year on 329,320 shares of treasury stock at one-half cent per share, and at the same time gave a lease on the mining property for five years. *Held,* (1) that the sale of the stock to the directors was constructively fraudulent, and voidable at the instance of the corporation, (2) that the directors of a corporation have the power to sell full paid treasury stock below par for what they deem it to be worth. *Mosher et al.* v. *Sinnott* (1905), — Col. —, 79 Pac. Rep. 742.

The court adheres to the well established rule that contracts of this class, especially where the consent of the purchasing director is necessary, while not absolutely void, are voidable at the instance of the shareholders. *Twin Lick Oil Co.* v. *Marbury,* 91 U. S. Rep. 587. The absence of actual fraud and the fact that all the directors were perfectly fair and honest in the transaction does not alter the case. *Munson* v. *Syracuse, Geneva and Corning R. R. Co.,* 103 N. Y. 58. Yet the purchasers must be placed *in statu quo. Peter* v. *Union Mfg. Co.,* 56 Ohio St. 181. The fact that full paid treasury stock was sold at one-half cent per share, though the par value was one dollar, seems fraudulent at first thought; yet when we remember that this was mining stock and may have been supposed worth one dollar per share originally, and at a later time considered of no value whatever, the valuation placed by the

directors is seen to be fair, especially when no actual fraud was shown. Most courts have held that such purchasers of "full paid" treasury stock at a low valuation are not liable to creditors of the corporation for the full value of the stock. *Davis Bros.* v. *Montgomery Furnace and Chemical Company,* 101 Ala. 127; *Lake Superior Iron Co.* v. *Drexel,* 90 N. Y. 87; *Railroad* v. *Dun,* 120 U. S. 299.

DAMAGES—REMOTE.—Plaintiff complains that on January 3, 1902, he ordered of defendant two gowns for his betrothed, that defendant was told at the time plaintiff was to wed on January 19, and was incurring great expense for the wedding feast; that defendant agreed, in consideration of $50, of which he then received $10, to furnish the gowns on or before January 18, but wholly failed in performance; that in consequence of such failure the wedding appointed for January 19 "was broken off" by the lady, and the plaintiff had uselessly incurred expenses to the extent of $500, wherefor he demands damages in said sum. *Held,* too remote for recovery. *Coppola* v. *Kraushaar* (1905), — N. Y. —, 92 N. Y. Supp. 436.

The complaint was dismissed at trial, before testimony was taken, because it did not state a cause of action. It cannot be said that the damages alleged were the immediate and necessary result of the breach, or to have entered into the contemplation of the parties when they made the contract. Notice of the object of the contract would not of itself change the measure of damages, unless it formed the basis of an agreement. *Booth* v. *Spuyten Duyvil R. M. Co.,* 60 N. Y. 487. Before the defendant can be held to the alleged damages, the parties must have had in contemplation that the prospective bride would forever refuse to wed if those "two dresses" were not forthcoming before the day set for the ceremony. *Hadley* v. *Baxendale,* 9 Exch. 341; *Griffin* v. *Colver,* 16 N. Y. 489, 69 Am. Dec. 718. If plaintiff was entitled to nominal damages, or stated facts which constituted a cause of action, the complaint should not have been dismissed. *Chatfield* v. *Simonson et al.,* 92 N. Y. 209, 218; *Hemmingway* v. *Poucher,* 98 N. Y. 281, 287. He certainly stated facts which required the inference that he was damaged $10. But he has not stated any facts which permit the inference that he suffered any other actual damages save those alleged, which are too remote. The averments of a complaint, if true, alleging a breach of contract by the defendant, entitle the plaintiff to a recovery of at least nominal damages. And an objection that damages are too remote should be raised by motion. *Treadwell* v. *Tillis,* 108 Ala. 262. Even though the plaintiff was benefited by the breach he was entitled to judgment for nominal damages. *The Excelsior Needle Co.* v. *Smith,* 61 Conn. 56. But when under the statute nominal damages would not carry costs, such damages should not be awarded. *Hickey* v. *Baird,* 9 Mich. 32. And for breach of an agreement for good consideration, nominal damages may be recovered, without proof of actual damages. *Hagan* v. *Riley,* 79 Mass. 515. Where a cause of action exists at least nominal damages will be presumed and must be allowed, and the fact that the plaintiff in a given case insisted upon substantial damages can not alter the rule. *Van Velsor* v. *Seeberger,* 35 Ill. App. 598. If no actual loss has been sustained by the violation of a contract, the damages are nominal, but this entitles the plaintiff to a